IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO.5628 of 2004

Between:

K.Krishnama Chari, S/o.Ramabrahmam,

Age:63 yrs. S.G.Teacher (Retd.)

Tribal Welfare Ashram School, Kangalawarigudem,

West Godavari District, presently residing at

Jangareddigudem, West Godavari District.

..... PETITIONER

AND

1. The Commissioner of Tribal Welfare,

Government of Andhra Pradesh, Hyderabad.

2 The Collector & Chairman, I.T.D.A.,

West Godavari District, K.R.Puram,

West Godavari, Eluru.

3 The Project Director, I.T.D.A.,

K.R.Puram, West Godavari District.

4 The District Tribal Welfare Officer,

K.R.Puram, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to call for the records connected with the proceedings of the District Collector, West Godavari, Eluru in Roc.No.K/350/94 dated 26-3-1996 as confirmed by the A.P.Administrative Tribunal in O.A.No.925 of 1997 by order dated 30-9-2003 and quash the same by issuing an appropriate writ, order or direction especially one in the nature of Writ of Certiorari and consequently direct the respondents to treat the period of suspension as 'on duty' and revise and refix the pay, pension and other retirement benefits and release the same.

Counsel for the Petitioner: MR.Y.VENKAT SASTRY

Counsel for the Respondents: GP FOR SERVICES II

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The Court made the following Order:(per G.BIKSHAPATHY, J.)

This Writ Petition is filed challenging the order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') in O.A.No.925 of 1997, dated 30-09-2003.

2. Though the facts are many, the question involved falls in a very narrow compass.

3. The petitioner was working in a Tribal Welfare Ashram School, Kangalavarigudem, West Godavari District. He was placed under suspension on 25-02-1991. Thereafter, charge sheet was issued and ultimately he was dismissed from service by order dated 25-02-1993. After availing an appeal remedy, he filed O.A.No.5914 of 1994 questioning the enquiry and consequential order of dismissal. The said O.A. was allowed by order dated 04-01-1995 with liberty to the competent authority to pass such orders as he may deem necessary in accordance with rules. Accordingly, the petitioner was treated as if he was continued under suspension and a show cause notice dated 17-04-1995 was issued. The petitioner was reinstated into service by proceedings dated 26-03-1996 and he was imposed with punishment of stoppage of two increments without cumulative effect and the period of suspension was treated as not on duty. The petitioner joined duty on 08-04-1996, and thereafter, he challenged the order of punishment in O.A.No.925 of 1997.

4. While admitting the O.A., interim suspension was granted. However, the petitioner retired on 30-06-1997 and finally, O.A. came to be dismissed on 30-09-2003. The said O.A. is now challenged by the petitioner before this Court.

5. Learned Counsel for the petitioner submits that the Tribunal has not considered Rule 54-B of the A.P.Fundamental Rules (for short 'the Rules') in proper

perspective. He submits that the proviso to Sub-rule (5) of Rule 54-B of the Rules clearly mandates that where the departmental proceedings against an employee placing under suspension for the imposition of a major penalty was initiated and finally ended with the imposition of a minor penalty, then the suspension can be said to be wholly unjustified and such employee should be paid full pay and allowances for the period of suspension by passing an appropriate order. This aspect was not considered by the learned Tribunal and therefore, the Tribunal referring to unconnected G.O.Ms.No.59 Fin. & Plg. (FW FR-II) Department, dated 27-03-1995, passed an erroneous order and the same is liable to be set aside.

6. We have heard the learned Government Pleader for Services-II.

7. The only question that falls for consideration is as to how the period of suspension should be regulated in the event of issuing charge sheet for major punishment and ultimately ending with minor penalty.

8. As on the date the punishment order was issued, the proviso was in existence. However, it was deleted by G.O.Ms.No.214 Fin. & Plg. (FW FW-II) Department, dated 22-12-1997. Proviso to sub-rule (5) of Rule 54-B prior to the amendment of the Rules reads as under:

> Provided that where the Departmental proceedings against an employee placed under suspension for the imposition of a major penalty, finally end with the imposition of a minor penalty, then the suspension can be said to be wholly unjustified and such employee should be paid full pay and allowances for the period of suspension by passing an appropriate order."

9. Inasmuch as the said proviso is in existence when the punishment order was passed, the period of suspension has to be regularized according to the said proviso. Under these circumstances, we are of the view that the Tribunal has not properly taken into consideration this aspect and erred in dismissing the O.A. filed by the petitioner.

10. Accordingly, the Writ Petition is allowed setting aside the order of the Tribunal directing the authorities to regularize the period of suspension according to the proviso existing on the date of the punishment order and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. No costs.

28th June, 2004

usd

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner of Tribal Welfare,

Government of Andhra Pradesh, Hyderabad.

2 The Collector & Chairman, I.T.D.A.,

West Godavari District, K.R.Puram,

West Godavari, Eluru.

3 The Project Director, I.T.D.A.,

K.R.Puram, West Godavari District.

4 The District Tribal Welfare Officer,

K.R.Puram, West Godavari District.

5. 2CCs to GP for Services-II, A.P.High Court Buildings, Hyderabad (o.u.t)

6. 2CD copies